Popkin's Motor Parts, Inc., d/b/a Popkin's Auto Parts & Paints *and* Local 239, International Brotherhood of Teamsters, AFL–CIO. Case 29–CA–18873

April 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

On January 25, 1996, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions, and the General Counsel and the Charging Party each filed letters answering the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and answering letters, and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Popkin's Motor Parts, Inc., d/b/a Popkin's Auto Parts & Paints, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In its exceptions, the Respondent contends that it never received notice of the unfair labor practice hearing. The record, however, contains the General Counsel's May 30, 1995 affidavit of service of the complaint and notice of the December 7, 1995 hearing on the Respondent and the Respondent's attorney. This exhibit includes a returned receipt card, date-stamped June 2, 1995, for the certified mailing of the above, signed by an agent of the Respondent. Under these circumstances, we find no merit in the Respondent's contention.

Saundra Rattner, Esq., for the General Counsel.
Wendell V. Shepherd, Esq. (Roy Barnes, P.C.), of New York, New York, for the Respondent.

DECISION

JAMES F. MORTON, Administrative Law Judge. No answer was filed to the complaint that issued against the Respondent, Popkin's Motor Parts, Inc., d/b/a Popkin's Auto Parts & Paints. Nor did it appear at the hearing held in Brooklyn, New York, on December 7, 1995. Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that allegations in a complaint, to which no answer has been filed, are deemed admitted to be true. Accordingly, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent, a New York corporation, has been engaged at its facility in Brooklyn, New York, in the wholesale and retail sale of automotive parts and paints and, in its operations during the calendar year immediately preceding the issuance of the complaint here, a representative period, it met the Board's standard for asserting jurisdiction in this case.

2. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, the Respondent has been an employer-member of the Automotive Parts Distributors Association, Inc. (the Association), an organization of employers which exists for the purpose of representing them in negotiating and administering collective-bargaining agreements with, inter alia, the Union.

5. The Association has recognized and bargained with the Union as the exclusive collective-bargaining representative of the unit described as follows, a unit appropriate for purposes of collective bargaining:

> All employees, excluding all proprietors, partners and officers, outside salesmen, foremen and supervisory employees as defined in the National Labor Relations Act, as amended, the sons or daughters of proprietors, partners or officers, office clerical employees working twenty (20) hours or less per week, employees excluded by name in an individual contract between the Union and a Member Employer, employees represented by any other labor organization in a Member Employer's establishment, and employees hired only for the summer months.

6. The Association and the Union have been parties to collective-bargaining agreements covering the employees in the above-described unit, the most recent of which contracts was effective by its terms from April 1, 1992, until March 31, 1995.

7. The most recent agreement between the Association and the Union required employer-members of the Association to make contributions monthly on behalf of unit employees to the Local 239 Welfare Fund and to the Local 239 Pension Fund and it further required that they deduct from the wages of the unit employees dues and fees for transmittal to the Union.

8. The Respondent has, since August 2, 1994, failed and refused to make contributions on behalf of its unit employees to either of those funds and has, from August 2, 1994, until March 31, 1995, failed and refused to transmit dues and fees to the Union for its unit employees.

9. The Respondent has implemented its own medical coverage benefit plan for its unit employees.

10. The Respondent has, since August 2, 1994, failed and refused to adhere to any of the terms of the most recent agreement between the Association and the Union. Further, since November 14, 1994, it has refused to recognize the Union as the representative of its unit employees.

11. On January 27, 1995, the Respondent rejected the Union's request of January 24, 1995, to negotiate terms and conditions of a renewal contract for its unit employees.

12. As the conduct of the Respondent found above in paragraphs 8 through 11 was not consented to by the Union, the Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. These unfair labor practices affect commerce within the

meaning of Section 2(6) and (7) of the Act. See *NLRB v. Katz*, 369 U.S. 736 (1962), and *Hall Industries*, 293 NLRB 785, 792 (1989).

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be required to remit to the Local 239 Welfare Fund and to the Local 239 Pension Fund the contributions due since on or about August 2, 1994. These payments to be made in the manner set forth in *Merryweather Optical Co*., 240 NLRB 1213, 1216 at fn. 7 (1979).

The Respondent shall remit to the Union dues and fees it was required to deduct from the wages of its unit employees for transmittal to the Union, as provided for in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest thereon as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

It shall also, as provided for in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), make whole its unit employees for any losses they may have suffered as a result of its failure to make the above contractually required fund payments, as a result of its failure to adhere to all other terms of the collective-bargaining agreement with the Union as noted above and as a result of its having unilaterally implemented a medical insurance benefit plan for them, with interest as computed in *New Horizons*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Popkin's Motor Parts, Inc., d/b/a Popkin's Auto Parts & Paints, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating the terms and conditions of any collective-bargaining agreement with Local 239, International Brotherhood of Teamsters, AFL–CIO for its employees in the unit found appropriate above or withdrawing recognition from the Union as their exclusive collective-bargaining representative.

(b) Failing or refusing to make contributions to employee benefit funds which are required to be made under the terms of a collective-bargaining agreement.

(c) Failing or refusing to deduct from the wages of unit employees dues and fees for transmittal to their collective-bargaining representative as required by the terms of a collective-bargaining agreement.

(d) Unilaterally implementing a benefit plan for its unit employees.

(e) Failing or refusing to adhere to any of the terms of a collective-bargaining agreement covering its unit employees.

(f) Failing or refusing to recognize the Union as the exclusive collective-bargaining representative of its unit employees.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of all the employees in the appropriate unit described in this decision, with respect to rates of pay, wages, hours, and other terms and conditions of employment by continuing to apply the terms and conditions of the contract with the Union which was effective from April 1, 1992, to March 31, 1995, until the Respondent and the Union reach a good-faith impasse or execute a new collective-bargaining contract, or the Union refuses to bargain in good faith.

(b) Make unit employees whole, with interest as provided for in the remedy section above, for any losses suffered as a result of its failure to make contractually required welfare and pension fund payments and its failure to adhere to other terms of the contract.

(c) Make all payments to the Welfare Fund and to the Pension Fund, as required under its contract with the Union.

(d) Transmit to the Union all dues and fees, with interest as provided for in the remedy section above, which it failed to transmit as required under the terms of its contract with the Union.

(e) Post at its facility in Brooklyn, New York, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of moneys due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT repudiate the terms and conditions of our contract with Local 239, International Brotherhood of Teamsters, AFL–CIO or notify it that we have withdrawn recognition of it as the exclusive collective-bargaining representative of our employees who are covered by that contract.

WE WILL NOT fail or refuse to make contractually required payments to the Local 239 Welfare Fund or the Local 239 Pension Fund.

WE WILL NOT fail to deduct and transmit to the Union dues and fees as required under our contract with the Union.

WE WILL NOT implement any benefit plan for employees represented by the Union without having first bargained in good faith with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make employees whole, with interest, for all losses suffered as a result of our not having adhered to the terms and conditions of our contract with the Union.

WE WILL make all payments due the Local 239 Welfare Fund and the Local 239 Pension Fund.

WE WILL transmit to the Union dues and fees, with interest, that we failed to transmit in accordance with the contract we have with the Union.

WE WILL adhere to all the terms of the collective-bargaining agreement between the Union and the Automotive Parts Distributors Association, Inc. (the Association).

WE WILL recognize and, on request, bargain in good faith with the Union with respect to the wages, hours of work, and all other terms and conditions of employment of all of our employees in the unit of employees as described in the collective-bargaining agreement between the Union and the Association.

POPKIN'S MOTOR PARTS, INC., D/B/A POPKIN'S AUTO PARTS & PAINTS